2013 IL App (1st) 100698-U

FIFTH DIVISION
November 1, 2013

No. 1-10-0698



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 84 C 10108 |
| | ) | |
| VINCENT WADE, | ) | Honorable |
| | ) | Victoria A. Stewart, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE Palmer delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice McBride concurred in the judgment.

**O R D E R**

¶ 1 *Held*: *Sua sponte* denial of defendant's *pro se* section 2-1401 petition for relief from judgment affirmed; mittimus corrected to reflect single convictions for first degree murder and home invasion, to conform to the judgment entered by the trial court.

¶ 2 Defendant, Vincent Wade, appeals from an order of the circuit court of Cook County denying his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1401 (West 2008). Defendant raises no argument regarding the propriety of that ruling, but requests that this court vacate the "surplus convictions[,]" which,

he claims, violate the one-act, one-crime rule, and remand his case with orders to correct the mittimus.

¶ 3 The record shows that in 1998, defendant was convicted of first degree murder, home invasion, and armed robbery on evidence showing that, while armed with guns and a knife, he and a co-offender made a forced entry into the apartment of Tyrone Tolliver, which was occupied by Tolliver and Melba Martin. The offenders stole several pieces of electronic equipment from the apartment, took $50 from Martin's purse, and shot and stabbed Tolliver multiple times, causing his death.

¶ 4 The jury returned general verdicts finding defendant guilty of the murder of Tolliver, the armed robbery of Tolliver, the armed robbery of Martin, and home invasion. At the conclusion of the sentencing hearing, the trial judge announced its sentencing determination as follows:

> "For the murder of Tyrone Tolliver, Mr. Wade, you are hearby sentenced to the rest of your natural life in the Illinois Department of Corrections without parole. Armed robbery of Tyrone Tolliver, you're sentenced to thirty years Illinois Department of Corrections. For the armed robbery of Melba Martin, you're sentenced to thirty years Illinois Department of Corrections. For the home invasion you're sentenced to thirty years Illinois Department of Corrections. All of those sentences are to run concurrently or together, and judgment is entered on each one of those sentences."

¶ 5 This court affirmed that judgment on direct appeal. *People v. Wade*, 185 Ill. App. 3d 898, 906 (1989).

¶ 6 On November 20, 2009, Wade filed a *pro se* petition for relief from judgment under section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2008). He acknowledged that his

petition was untimely, but asserted that it was not time-barred because the judgment was void due to the grand jury's failure to review the medical examiner's report before returning the indictment, and because "[t]he same act that formed the basis for the predicated felony for the felony-murder charge arose from or was inherent in the act of killing the victim[.]" On January 11, 2010, the circuit court denied the petition as frivolous, and, subsequently denied his motion to reconsider.

¶ 7 On appeal, defendant has abandoned the claims set forth in his petition, and, instead, contends that he was improperly convicted of four counts of murder and two counts of home invasion, in violation of the one-act, one-crime rule.[1] In order to circumvent his failure to timely file his petition (735 ILCS 5/2-1401(c) (West 2008)), defendant asserts that three counts of murder and one count of home invasion are void and must be vacated (*People v. Harvey*, 196 Ill. 2d 444, 447 (2001)).

¶ 8 The State responds that defendant's untimely petition was properly denied because the judgment is not "void" but merely "voidable[.]" Defendant replies that the entry of multiple convictions of home invasion and murder are not authorized by statute, and are thus "void."

¶ 9 A sentence that is void may be attacked at any time, either directly or collaterally (*People v. Wade*, 116 Ill. 2d 1, 5 (1987)), but a sentence that is voidable is not subject to collateral attack (*People v. Davis*, 156 Ill. 2d 149, 155-56 (1993)). The question of whether a sentence is void, as opposed to voidable, is a question of jurisdiction. *Davis*, 156 Ill. 2d at 155. A judgment is void when entered by a court without jurisdiction of the parties or the subject matter or that lacks the inherent power to make or enter the particular order involved. *Wade*, 116 Ill. 2d at 5.

---

[1] In his initial brief, defendant made the same claim regarding his two armed robbery convictions; however, defendant withdrew that claim in his reply brief, conceding that the evidence at trial was sufficient to enter judgment on both counts because each count related to the taking of separate property from a separate victim. Thus, no further review of this issue is warranted.

¶ 10 The supreme court has held that a sentence, or portion thereof, which is not authorized by statute is void. *People v. Thompson*, 209 Ill. 2d 19, 23 (2004). A trial court, upon determination of guilt, has no authority to impose a sentence other than that provided by statute. *Wade*, 116 Ill. 2d at 6. Because the home invasion statute allows only one conviction per entry (*People v. Cole*, 172 Ill. 2d 85, 102 (1996)), and the murder statute allows only one conviction per death (*People v. Lego*, 116 Ill. 2d 323, 344 (1987)), the imposition of multiple sentences based on a single act of murder or home invasion is void. Accordingly, we may review defendant's claim.

¶ 11 The State further contends that we should affirm the judgment because the record reflects that defendant was convicted and sentenced on only a single count of murder and home invasion. We agree.

¶ 12 Although defendant contends that he was convicted of four counts of first degree murder and two counts of home invasion, the record clearly shows otherwise. The jury returned verdicts finding him guilty of "*the* offense of home invasion" and "*the* offense of murder" (emphasis added); and, correspondingly, the trial court sentenced defendant to single terms for "*the* murder of Tyrone Tolliver" and "*the* home invasion" (emphasis added).

¶ 13 That said, defendant correctly observes that four counts of murder and two counts of home invasion are listed in the mittimus. Where the court's written judgment conflicts with its oral pronouncement, the oral pronouncement controls (*People v. Lewis*, 379 Ill. App. 3d 829, 837 (2008)), and we may correct the mittimus to that effect (*People v. Quintana*, 332 Ill. App. 3d 96, 110 (2002)). Based on the record, we find that the trial court sentenced defendant for one count each of murder and home invasion, and that the mittimus must be corrected to conform to that judgment. Pursuant to our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we instruct the clerk of the circuit court to correct defendant's mittimus to reflect one conviction for murder (count 1) and one conviction for home invasion

(count 14), to be served concurrently with his two convictions for armed robbery (counts 15 and 16).

¶ 14 Because we have determined that the court entered judgment on only one count of home invasion, we need not address the State's alternative contention regarding the propriety of two convictions for that offense based on a double entry.

¶ 15 For the reasons stated, we affirm the denial of defendant's petition for relief from judgment under section 2-1401 of the Code, and correct the mittimus as indicated.

¶ 16 Affirmed; mittimus corrected.